

101



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,471	07/24/2001	Theodore M. Wong	SP-1093.3	6281

7590
Richard B. Taylor
P. O. Box 88940
St. Louis, MO 63188

08/09/2004

EXAMINER

WARE, DEBORAH K

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 08/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/912,471	WONG ET AL.	
	Examiner	Art Unit	
	Deborah K. Ware	1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 81-93 and 96-124 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 81-93 and 96-124 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 81-93 and 96-124 are presented for reconsideration on the merits.

Papers

The Terminal Disclaimers (TDs) filed April 1, 2004 and April 22, 2004, have been received and entered of record. The amendment and miscellaneous incoming letter filed April 1, 2004, have also been received and are acknowledged.

Claim Rejections - 35 USC § 102/103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 81-93 and 96-124 remain rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP 0 380 343 for reasons of record.

Applicant's arguments filed April 1, 2004, have been fully considered but they are not persuasive. The argument that the EP 0 380 343 does not disclose ribonucleic acids or use of an enzyme to degrade them is noted and hence does not explicitly anticipate the claims. However, RNAs contain phosphorous groups, these groups would be cleaved by the Finase which is a an phosphatase enzyme disclosed by the cited EP reference, and the RNAs present in the soy protein would be degraded. This would be an intrinsic effect and hence inherent to the teachings of the reference. The Finase is clearly disclosed to be capable of deliberately cleaving the phosphate groups. Applicants' reference to their response of July 2, 2003 is noted, however, in short to this argument thereof that the EP reference is not limited to acid phosphatase, the enzyme

in Table 1 of the EP reference is Finase which includes phytase and acid phosphatase of which reads on an enzyme preparation containing an acid phosphatase.

Furthermore, the declaration of Wong filed with the response of July 2, 2003, refers to a different enzyme altogether, NATUPHOS and for reasons of record does not persuade one of skill in the art to not use the Finase disclosed by the reference. Thus, for reasons of record this argument is not deemed convincing for purposes of removing the EP reference as prior art against the claims. The claims remain anticipated by the teachings therein. Furthermore, the Finase contains acid phosphatase as does Applicants' claimed enzyme preparation and hence the argument that the EP reference can be practiced without an acid phosphatase is not deemed persuasive.

In addition, examiner fails to see how the pocess of the EP reference can be practiced without degrading ribonucleic acids in a soy protein material since this is not taught by the reference. The degradation of the RNAs is an inherent feature of the disclosed enzyme preparation. The declaration of Wong did not show that Finase does not degrade RNAs contained in the soy protein. Technical reason as provided of record is clearly set forth which explains the inherency of degrading RNAs in teachings of the cited EP reference. Furthermore, it is not a probability or a possibility that the RNAs are degraded because they are degraded by the acid phosphatase clearly present in the disclosed enzyme preparation.

With respect to the arguments related to the alternative obviousness part of the rejection, it is unclear why Applicants set forth that there is nothing in the EP reference which directs one to degrade RNAs with an acid phosphatase because the reference

clearly discloses the acid phosphatase enzyme. The point that RNAs are not mentioned is noted, however, for reasons noted of record these are expected and well known to be present in soy protein and would alternatively therefore, be expected to be degraded. The application of the disclosed enzyme preparation containing acid phosphatase to the disclosed soy protein would have at least been expected to successfully degrade RNAs. The disclosed enzyme preparation and the instant enzyme preparation do not appear to be any different and hence they would be expected to behave the same on a substrate containing RNAs. Furthermore, any of the factors set forth by Applicants at page 13-14 of the instant response of April 1, 2004, which may provide some inhibition of enzyme activity on a substrate are pure speculation and not taught or supported by either the cited EP reference or Applicants specification as being factors for which the enzyme preparation has borne any inhibitory effects. The facts based on the case and the cited prior art against the claims therein are not subjected to any of these alleged factors. For that matter Applicants' own claimed method may not even operate under such conditions produced by enzyme inhibitory factors.

Finally the arguments directed to the exhibit (Leach et al) and the declaration by Wong regarding expected and unexpected degradation of RNAs in terms of phosphatases it should be noted that the alternative teaching of obviousness presented in the case by the examiner is directed to the specific disclosure of the cited EP reference which is with respect to an enzyme preparation containing acid phosphatase as claimed herein and not the broad class of phosphatases as argued by Applicants

and set forth in the declaration and exhibit. The claims remain at least prima facie obvious over the cited prior art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

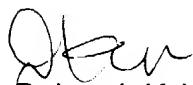
No claims are allowed.

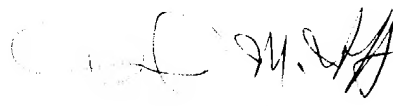
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1651

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Deborah K. Ware
August 7, 2004


9/11/04
1651